

MEETING MINUTES CITY OF MILPITAS

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, June 20, 2006
Time: 6:00 PM (Closed Session)
7:00 PM (Public Business)
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd.

ROLL CALL

Mayor Esteves called the meeting to order at 6:05 PM.

PRESENT: Mayor Esteves, Vice Mayor Gomez, Councilmembers Giordano, Livengood and Polanski. Ms. Giordano arrived at 6:07 PM.

ABSENT: None

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following issues:

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to California Government Code §54956.8 Property APN# 086-02-086

Persons Negotiating: Milpitas Redevelopment Agency and Piercey Toyota Automotive Group
Under Negotiation: Terms for Option, Sale or Lease of Property

(2) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to California Government Code §54956.9(a)

- City of Milpitas v. Turner Construction et al., Santa Clara County Superior Court Case No. 103CV815946 Consolidated with Case No. 103CV008400
- Preston Pipelines v. City of Milpitas & City of Milpitas v. Black and Veatch Santa Clara County Superior Court Case Nos. 105CV-038444 and 105050145
- City of Milpitas v. City of San Jose, Santa Clara County Superior Court Case No. CV046013
- Milpitas Redevelopment Agency v. Winsor et al. Santa Clara County Superior Court Case Nos. 105CV043954 and 105CV043966

The City Council reconvened in Open Session at 7:00 PM with Mayor Esteves presiding and all City Councilmembers present.

CLOSED SESSION ANNOUNCEMENT

On a 5-0 vote, in the Preston Pipelines matter, the City Council authorized a settlement in the amount of \$45,000 from the City and \$35,000 from Black and Veatch. No final action was taken on the other issues.

PLEDGE

Boy Scouts Troop No. 92 Color Guard led the Pledge of Allegiance.

INVOCATION

One minute of silence was observed.

MINUTES

MOTION: approve minutes of June 6 and 13, 2006 City Council meetings, as submitted.

Motion/Second: Vice Mayor Gomez/Councilmember Giordano

Councilmember Polanski abstained from the vote on June 13 minutes.

Motion carried by a vote of:

AYES: 5

NOES: 0

ABSTAIN: 1 (Polanski – June 13)

SCHEDULE OF MEETINGS

MOTION: to approve the Schedule of Meetings, as submitted

Councilmember Polanski reminded the public that there were no City Council meetings in July.

Motion/Second: Councilmember Giordano/Vice Mayor Gomez

Motion carried by a vote of:

AYES: 5

NOES: 0

PRESENTATIONS

Mayor Esteves proclaimed **Parks and Recreation Month** for the month of July 2006, accepted by Recreation Services Manager Bonnie Greiner.

A Certificate of Appreciation was presented to Milpitas Police Officer **Joe Heylen**, for his life saving emergency skills employed to save the life of an 8-month old baby last month.

A Commendation was presented to **Tram Nguyen**, Milpitas High School Leo Club President, who raised money for Diabetes Association and American Cancer Society, among other efforts.

Congratulations were presented to 9 year old Milpitas resident **Christina Ramirez** and Police Department Dispatcher **Laura Peterson** – 9-1-1 For Kids – Hero Award Recipients (one of only two statewide in California), for their joint efforts to maintain Christina’s mother, until paramedics arrived at the family’s home.

PUBLIC FORUM

Ernie Catreza, Milpitas resident, spoke on behalf of Mr. Umar Hayat, who could not attend the meeting. Neighbor supporters of Mr. Hayat’s were present in the audience, and he referred to a petition already filed with the City Council. Mr. Hayat wanted resolution on the issue - regarding his complaint on Tier 2 residential water rates - this evening, or he would try to go to the ballot.

Councilmember Livengood responded that Mr. Hayat’s suggestion was challenging, and he wanted this subject to go before the Utility Rate Subcommittee. At a meeting of that group, they could discuss Tier 2 rates and its impact on the rest of the City. Engineer Marilyn Nickel noted that the next anticipated meeting of the subcommittee was not until January. Mr. Livengood said a meeting could be scheduled any time soon, in order to discuss the current issue. Mayor Esteves agreed. The Utility Rate Subcommittee meeting was then scheduled on Tuesday, August 8th at 5:30 PM in the City Hall Committee room.

Daniel McCall, a San Jose resident, made a variety of remarks to the City Council.

ANNOUNCEMENTS

Councilmember Giordano offered congratulations to Burnett Elementary School, selected as a California Distinguished School, the second one in Milpitas.

Councilmember Polanski offered congratulations to the 650 Milpitas High School graduates. She announced a meeting on June 21, at 7:00 PM in the Committee Room, an informational meeting on the City’s application to adjust the Urban Service Area boundary to match the Urban Growth boundary (due to go before the County LAFCO board this summer).

Councilmember Polanski announced that she watched the videotape of the AB1234 training meeting that occurred last Tuesday. She planned to attend the training in person in Union City, per the advice of City Attorney.

Mayor Esteves congratulated the recent Milpitas High School graduates. He asked City staff to display a message on the red reader board.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted.

Motion/Second: Councilmember Giordano/Councilmember Livengood

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar, as amended.

Councilmember Polanski requested removal of Items No. 8 and No. 15. She asked one brief question on Item No. 14 which staff responded to (regarding use of donated funds for the emergency mass feeding drill next year).

Motion/Second: Councilmember Livengood/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

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| <p>* 4. Kiwanis Club Donation Request for Annual Child Spree Program</p> <p>* 6. FY 2006-07 Economic Development Commission Work Plan</p> <p>* 9. 2006 Traffic Signal Warrant Study Program Findings</p> <p>* 14. Grant from Milpitas Wal-Mart Store for Feeding Drill</p> <p>* 17. Final Acceptance of the Piedmont Road Bike Lane and Sidewalk Improvements at St. John's Cemetery</p> <p>* 18. Final Acceptance of the 2004 Street Resurfacing Project, Projects No. 4182 and No. 4223</p> <p>* 19. Milpitas Night Out on Thursday, August 3, 2006</p> <p>* 20. Agreement with Jones Hall for Legal Services Related to Bond Financing</p> <p>* 21. Agreement with E. Wagner & Associates, Inc. for Financial Advisory Services Related to Bond Financing</p> <p>* 22. Singley Area Street Rehabilitation, Phase IV, Project No. 8181 (Santa Rita Drive), and</p> | <p>Approved the Mayor's recommendation of a \$1,500 donation to the Milpitas Kiwanis Club for the annual Child Spree program at Mervyn's.</p> <p>Approved the Proposed FY 2006-07 Economic Development Commission Work Plan.</p> <p>Received staff report on the 2006 Traffic Signal Warrant Study Program Findings and Recommendations.</p> <p>Accepted a \$1,500 grant from WalMart, approved additional budget appropriation in the Purchasing Division Budget for FY 2006-07, and permitted the Purchasing staff to administer the funds for the 2007 Mass Feeding Drill next spring.</p> <p>Adopted Resolution No. 7608 granting final acceptance and release of the bond for Project No. 4214, for GradeTech, Inc.</p> <p>Adopted Resolution No. 7609 granting final acceptance and release of the bond for Projects No. 4182 and No. 4223, for Archibald Paving Co.</p> <p>Adopted Resolution No. 7610 setting August 3 as the date for this year's "Milpitas Night Out" neighborhood event, as recommended by the Citizens Advisory Commission.</p> <p>Authorized the City Manager to execute an agreement with Jones Hall for legal services related to bond financing, subject to approval as to form by the City Attorney.</p> <p>Authorized the City Manager to execute an agreement with E. Wagner & Associates, Inc. for financial advisory services related to bond financing, subject to approval as to form by the City Attorney.</p> <p>Approved plans and specifications, and authorized advertising for bids for Projects No. 8181 and No. 4229.</p> |
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Street Resurfacing Project 2006,
Project No. 4229

- * **23.** Reject Bids and Authorize Re-Advertisement for bids for the Well Upgrade Program
Rejected all bids for Project No. 7076, and authorized re-advertisement of the project for bid proposals.
- * **24.** Montague Expressway Eastbound Median Modification from Piper Drive to Gladding Ct.
Approved plans and specifications for Project No. 4179 and authorized advertising project for bid proposals.
- * **25.** Award Contract for the 2006 Slurry Seal Project
Awarded construction contract to American Asphalt Repair and Resurfacing Company, Inc. for Project No. 4229, in the amount of \$158,721.
- * **26.** Agreement Modifying Driveway Access Easement, Shared Community Center and Town Center Access Driveway
Approved the agreement modifying driveway access easement, shared Community Center and Town Center access driveway, Project No. 3153.
- * **27.** Excess Workers' Compensation Insurance
Approved acceptance of C.N.A. Insurance Corporation for the City's excess workers' compensation insurance for FY 2006-07, authorizing the City Manager to pay Brown & Brown of California the premium rate of \$180,359.
- * **28.** Amendment to Contract between the City of Milpitas and New Orient Restaurant
 - (1) Approved the second amendment to the contract between the City of Milpitas and New Orient Restaurant from July 1, 2006, through June 30, 2007, for the Senior Nutrition Program.
 - (2) Authorized payment to New Orient Restaurant for the total amount of this contract, \$28,416, not to exceed \$3.70 per meal.
- * **29.** Amendment to Contract with Compass Group USA, Inc. (Bateman Division) and the City of Milpitas
 - (1) Approved the second amendment to the contract with Compass Group.
 - (2) Authorized payment to Bateman, Compass Group USA, Inc. for July 1, 2006 through June 30, 2007, not to exceed \$3.79 per meal for a total of \$46,390 for the fiscal year.
- * **30.** Senior Nutrition Contract between the County of Santa Clara Social Services and the City of Milpitas
 - (1) Approved the contract between the County of Santa Clara (Social Services) and the City of Milpitas effective July 1, 2006, through June 30, 2007.
 - (2) Authorized payment to the County of Santa Clara for the amount of the contract, \$145,702.
- * **31.** Award Bid for Streetlamp Banners and Hardware
Awarded bid for 270 Streetlamp banners to Sierra Display Inc. for the not-to-exceed amount of \$47,522.35, including tax and freight.
- * **32.** Requests for Proposals for Preparation of the Housing Marketing Study
Authorized staff to send the Request for Proposals for the preparation of the Housing Marketing Study.
- * **33.** Renewal of Software Support and Maintenance Fees with Two Vendors
Authorized City Manager to approve the payment of the annual software support and maintenance fees to Granicus for Web Streaming City Council and Planning Commission Meetings in the amount of \$9,000 and Tritech for the maintenance of the Stratus Server in the amount of \$16,970.29 (for Fiscal Year 2005-06).
- * **34.** Renewal of Software Support and Maintenance Fees with Various Vendors through June 2007
Authorized City Manager to approve the payment of the annual software support and maintenance fees to Actuate Corporation for the Finance System tracking and reporting in the amount of \$16,970.29, CompuDyne Public Safety & Justice Inc. for the Police Records Management System in the amount of \$37,454 and to TriTech Software Systems for the Computer Aided Dispatch System in the amount of \$87,440 (for Fiscal Year 2006-07).

**3. Landscaping and Lighting
Maintenance Assessment
District No. 98-1**

Engineer Mehdi Khaila explained the need for the public hearing each year to adopt the Engineer's Report for the Landscaping and Lighting Maintenance Assessment District to provide funds for District No. 98-1. The total assessment for FY 2006-07 year is \$33,459.16

The Mayor opened the public hearing for comment; none heard.

(1) Motion: to close the public hearing

Motion/Second: Vice Mayor Gomez/Councilmember Livengood

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

(2) Motion: Adopt Resolution No. 7605 Approving Annual Engineer's Report and the Levying of Assessment: Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon, Project No. 9489

Motion/Second: Vice Mayor Gomez/Councilmember Giordano

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA 1. CALL TO ORDER

Mayor/Agency Chairman Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:48 PM.

RA 2. ROLL CALL

PRESENT: Mayor/Chair Esteves, Vice Mayor/Vice Chair Gomez and Agency/Councilmembers Giordano, Livengood and Polanski

RA 3. MEETING MINUTES

Motion: approve the Redevelopment Agency minutes of June 6 and 13, 2006, including joint meetings with the City Council, as submitted.

Motion/Second: Vice Chair/Vice Mayor Gomez / Agency/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

**RA 4. Approval of Agenda and
Consent Calendar**

Motion: approve the agenda and consent calendar

Motion/Second: Agency/Councilmember Livengood/ Agency/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

RA 5. Public Hearing:
Disposition and Development
Agreement and Ground Lease
for Real Property for the new
County Health Center

Economic Development Manager Diana Whitecar presented the documents before the Agency and Council, for approval to move forward on the County Health Center in the Milpitas Mid-Town area. She acknowledged Mr. Alex Gallego, Director of Construction Services (lead on two health centers), Mr. Michael Lipmann from the Valley Medical Center (Santa Clara County), Architect Peter Schlosser from the firm of Ashen and Allen, and Mr. Robert Wetmore, from Keyser Marston Associates.

Ms. Whitecar provided an explanation of the parcel (viewed on screen), and historically reviewed the long-anticipated project. At this time, all parties were ready to bring forward the Disposition and Development Agreement, including the lease for the parking garage and purchase of the land for the health center facility.

Milpitas Redevelopment Agency Resolution No. RA 259 Approving a Re-use Report Required By California Health & Safety Code §33433, Authorizing the Sale and Lease of Real Property to the County of Santa Clara and Execution of a Disposition and Development Agreement and a Ground Lease, Adopting Findings in Connection with Such Sale And Lease, and Approving Execution of a Reciprocal Easement Agreement

Motion carried unanimously by a vote of:

	AYES: 5
	NOES: 0

City of Milpitas Resolution No. 7606 Authorizing the Sale and Lease of Real Property to the County of Santa Clara, Approving the Re-use Report Required By Health And Safety Code §33433, and Adopting Findings In Connection with Such Sale and Lease

Motion carried unanimously by a vote of:

	AYES: 5
	NOES: 0

Economic Development Manager Diana Whitecar acknowledged the City staff who worked on the plan to come up with new banner designs and locations, to improve the entry points in Milpitas. A map displaying where banners were proposed to be installed on streetlight poles throughout the City was put on view.

Individual Councilmembers provided their comments and feedback on the specific banners. Councilmember Livengood wondered why there was no Milpitas Blvd. presence on the map showing banner locations, and requested to add those in the future.

Councilmember Polanski asked about installing American flags all along Calaveras, or other Boulevard, as a patriotic statement. Staff agreed to respond later, separately, on that concept to display flags on the state-owned roadway.

Speakers from the audience:

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Mrs. Linda Rabe, wanted the Public Art Committee to review these banners and make its recommendation. She preferred the knife, fork and spoon to indicate a visit to the City for dining.

Mayor Esteves asked staff to look into more visibility of colors, maybe colors should be loud colors and very noticeable for those who drive by.

Motion carried by a unanimous vote of:

	AYES: 5
	NOES: 0

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2. Adopted City of Milpitas Resolution No. 7607 of findings pursuant to Community Redevelopment Law §33334.2 (g)(1) for the use of housing funds outside of the Redevelopment Project Area.
3. Adopted Milpitas Redevelopment Agency No. RA 260 Resolution of findings pursuant to Community Redevelopment Law §33334.2 (g)(1) for the use of housing funds outside of the Redevelopment Project Area.

The Agency/Council took a break at 9:00 PM and reconvened at 9:10 PM.

RA 15. ADJOURNMENT

Chair/Mayor Esteves adjourned the Redevelopment Agency meeting at 9:10 PM.

REPORT OF CITY COUNCIL AND COMMITTEE

5. Planning Commission Alternate member

Councilmember Polanski requested this topic to be addressed by the Council. She read aloud the written staff report and asked for a date to schedule applicant interviews and consider appointment of the Planning Commission alternate.

Mayor Esteves asked about the six other applicants from last fall. He then asked the City Clerk to contact those persons to inquire about their current interest to be considered for the Alternate position. Mr. Livengood suggested interviews at 5:00 PM on a regular Council meeting night.

City Clerk Lavelle noted that two new applications had been received in her office for the alternate position, and that approximately six applications from last fall remained current. She agreed to respond back with the information requested, and the Council could then consider the interview date at its next meeting.

7. Public Art Committee Report

Recreation Services Supervisor Kathleen Yurchak provided the oral report on the PAC's activities. She described the Committee's three meetings this year and its efforts to date, including work on its Master Plan, mission statement, purpose statement, and concept of a Yearly Acquisition Plan.

Committee Chairperson Bill Foulk complimented Ms. Yurchak for all of her work with the Committee, as a lot had been accomplished already. He read aloud the PAC's mission statement: "PAC is dedicated to the planned acquisition of art of exceptional quality and enduring value as outlined by the City of Milpitas Public Art ordinance." He also read its purpose statement: "The purpose of the PAC is to encourage appreciation of the arts while enhancing the vitality and creative diversity of Milpitas through public art." A semi-annual report on fundraising efforts was also going to be prepared.

Motion: accept progress report of the Public Art Committee and approve the Mission and Purpose statements as presented

Motion/Second: Councilmember Polanski/Councilmember Giordano

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

8. Report on School Crossing Guards Study

Traffic Engineer Jaime Rodriguez presented his report to Council on the School Crossing Study – Recommended Policy for Establishment of Adult Crossing Guards (which had previously been presented at the Transportation Subcommittee).

There were 36 crossing guards in City today, but no policy for establishment of criteria for those guards. He reviewed his written report, and expressed that only 9 crossings in this City satisfy criteria provided by state. He recommended then specific, suggested criteria for Milpitas.

At the Abel St & Great Mall Parkway intersection, staff recommended removing crossing guards from that location since it was demonstrated that there were few or zero crossings occurring in the morning and afternoon. Those could then be re-deployed to

11. Zoning Change for Farmers Market

Planning Director Tom Williams responded to a request from Councilmember Polanski on this subject. He explained that a recommendation could be made to allow a Farmers' Market in any zone if a Conditional Use Permit was obtained. Additionally, the City would narrow the CUP to parks/open space district and school sites.

His specific recommendation this evening to Council was to remove schools out of the R1-6 zone. Then, rezone school property as Institutional, and then the City could add Farmers' Market use as permissible one in that zone (at school sites). It would take about two months to implement this suggestion.

Vice Mayor Gomez stated he had no problem with the staff suggestion at this meeting. However, he was not ok with the first suggestion in the staff report on allowing the market anywhere solely with issuance of a CUP. That was too vague and invited other issues then.

Councilmember Livengood stated he was of the same mind as Mr. Gomez. He was not in favor of the earlier written staff recommendations. He wanted the CUP to come before the Planning Commission and the City Council. The best idea he'd heard for the location of Farmers' Market was to use the parking lot to the west of MUS District office. He wanted City Council to have final say on school sites, with an opportunity for neighborhoods to hear about it and comment at a public meeting.

Mayor Esteves asked staff if the school district would lose any advantage by changing the zoning. Mr. Williams replied no.

Motion: to approve the staff recommendation – presented at the meeting - to re-zone school district property from R1-6 to Institutional, with a required Conditional Use Permit approved at the Planning Commission and the City Council for any Farmers' Market at such sites

Motion/Second: Councilmember Polanski/Councilmember Livengood

Motion carried by a unanimous vote of: AYES: 5
NOES: 0

12. Response on First Responder Capability

Fire Chief Clare Frank provided an oral response to inquiries made at the Public Forum at the previous City Council meeting. A member of the public was interested to know what emergency communication was in place in the event of a disaster. The resident had inquired about what was in place and how do first responders use that communication to connect to the Office of Emergency Services.

Chief Frank described the City's radio-based system including computer-aided dispatch and first responders in communication at all times, with significant redundancies in place. Non-radio based communication included mobile and landline phones, integrated Outlook system on the computer, and a public notification system (including sirens, telereminder, 1620 AM radio, TV cable Channel 15, and City Website).

There is a comprehensive communication infrastructure in place in the City of Milpitas, she reported. Additionally, the Chief explained the difference in communication efforts with Emergency Operation Center activation (larger incidents) and without (9-1-1 system for smaller emergency).

OES operations were tiered in emergency management from Local to Regional (the operational area is County) to State (Region II in California) to Federal (FEMA) response.

The Mayor and Council thanked the Fire Chief for her update report.

13. Report on KB Home Construction Site

Planning and Neighborhood Services Director Tom Williams addressed recent concerns raised by neighbors of the KB Home construction site in Milpitas. He spoke to bring the City Council up to date with how some residents of Sylvia Ave, Sylvia Ct, and Palmer St concerns were being addressed.

Complaints received at the City from residents included: issues regarding the 10 foot masonry wall, temporary fencing, drainage, installation of new fences, property line identification, construction issues, building height, power outages, responsiveness of KB Homes and on site labor issues.

A neighborhood meeting was held the previous evening (June 19) across from the work site at the Senior Center, for residents. 32 people attended, along with KB Home staff, and City Building and Planning staff.

Mr. Williams displayed on the screen where a v-ditch was planned to be installed in between a concrete wall and to-be-installed wooden new fences behind existing homes. It was in a flood plain area. A new storm drain system was being installed already by KB Home, it would help the neighbors a lot with regarding to flooding, where they currently have sump pumps due to drainage problems in the rainy season.

At the meeting, the group came to the following resolution, agreed to by KB Home for the residents:

1. KB Home to look into feasibility of eliminating 3rd story option
2. Timeline to construct new good neighbor fence- early July to start and complete by the 2nd week in August
3. Fence type to be redwood at 8 ft height (6 ft fence with lattice) or installed to match individual homeowners' existing side yard fence
4. KB Home to look at installing opaque windows on 3rd story of north elevation facing Sylvia Ave; staff will work with KB on this
5. KB Home to control or stop on-site music and foul language
6. KB Home to issue weekly update memo to residents on Tuesday or Wednesday

Ray Panek, Senior Vice President for KB Home, thanked all the neighbors who attended the meeting and he came to express what KB was doing. He garnered good results from the meeting with residents, to get to the resolutions noted by Mr. Williams. Mr. Panek said KB had agreed it would not build a third story on the Alvarado Common segment abutting Sylvia Ave. He admitted to less than satisfactory communication with neighbors until now. He had thought it was a fair explanation provided to homeowners about the drainage concept. A memo would go out on Mondays to neighbors explaining activities as well as contact information.

Vice Mayor Gomez cared that homeowners have a single point of contact. Mr. Panek repeated that the weekly memo would contain the contact information.

Councilmember Giordano had concerns relating to obscuring the development, and she asked about the maturity of trees and trees have a visual impact. Is this wall to be landscaped? KB Home's response was yes, and 15-20 ft box trees were required for the site. KB Home would deliver notice to the residents at their doors regarding installation.

Mayor Esteves asked what was the maximum height allowed by the City Council? Mr. Williams replied 12 ft. and three stories was the maximum building height (not specified in feet.) The Mayor asked KB Home, what was the response time anticipated? Mr. Panek replied immediate. It was noted that consistency in reply to neighbors was important to KB Home and the Mayor agreed.

Planning Director Williams asked neighbors to call him directly, as the City contact on this construction project.

Councilmember Polanski reiterated that one of the questions that came up was how was KB going to finish the fence, trench, building, without doing any damage to existing backyards? Mr. Panek stated the company would go door to door and work directly with the homeowners, and arrange for fence design and access to yards for installation.

Mayor Esteves then asked for speakers from the public.

Mr. Robert Drobot, noted it was his second time in the room, in awe at the dedication of elected officials and complimented the City Council for their hard work. He resided at 190 Sylvia Ave, and reviewed the neighbors' meeting with City staff and KB Home the previous evening and what was agreed to. How KB would accomplish some of those details was not revealed, and he had concerns on how they were going to do it. Mr. Drobot felt that KB's verbal communications did not meet their actions, and was skeptical about promises made.

Mayor Esteves asked for cooperation between all parties in this situation. He asked how much damage would there be in the backyards? Mr. Panek said KB staff would go door to door to ask permission to enter backyards. Otherwise, the necessary work would have to be done by hand. If denied, KB can conduct work within the two-foot area, and he did not foresee any damage. Plants would be removed and replaced where needed. KB expressed its desire to be a good neighbor and not cause problems.

Councilmember Livengood did go down to Sylvia and looked at some of the homes' backyards. The method (in between fences) was going to cause a lot of work for KB, with the two-foot drain area. He asked residents to take KB Home at their word, with the promises made last night. He believed residents should be reimbursed by PG&E if they went without electricity for three days. Councilmember Livengood said staff would help the residents.

Mr. Williams noted that the County had installed a chain link fence years ago, over time property owners took down old fencing, and residents have plants on former County/now KB Home property. Replanting was an issue when it's on KB land, not the homeowners. Some of those plants would have to be removed that were on KB's property.

Residents:

Quang Do, 210 Sylvia Ave, lived with his parents and expressed concerns about privacy relating to the height of the development. With the lack of privacy, the family no longer goes in the backyard anymore. Privacy was the most critical for his family. He felt trees would not obscure the third story of the new buildings. This would lower house values in their neighborhood, and what could they do?

Mr. Do (father of previous speaker) spoke reiterating what his son said, with specific concern for privacy in his backyard. He was also worried about increased traffic.

Buddy Magray, 222 Sylvia Ave., lived in his house for 13 years. He wanted to sell his house now because of the KB Home development, but felt he cannot. He complained about privacy loss in back yard.

Mayor Esteves said when the project was proposed, there were public hearings held. Staff responded to that comment, and that there were neighborhood meetings too. The project was proceeding as approved on the plans.

Mr. Drobot remarked further than the absence of credibility (of KB Home) as to what staff was saying and what residents were saying about the public meetings.

Motion: direct City staff to continue to work with residents and KB Home to resolve issues, and staff must provide residents with all documentation of prior public hearings, public meetings and approvals granted on the project, and to provide future updates to Council on progress of construction and KB Home's commitment to nearby residents

Councilmember Polanski reminded all residents how to contact Councilmembers to provide any feedback or further complaints on this matter.

Mayor Esteves requested the City Clerk to provide close-to-verbatim meeting minutes for this section of the meeting, especially the KB Home promises made at this meeting to neighboring residents.

Motion/Second: Councilmember Livengood/Vice Mayor Gomez

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

15. 4th of July Update

Early in the meeting, Recreation Services Manager Bonnie Greiner provided a brief oral staff report on the updated number of participants in the parade scheduled for July 4, Independence Day.

Ms. Greiner announced there were 40 entries, with no musical bands entered. There would be many walkers and primarily vehicles in the parade. Later, live music and fireworks were planned in Milpitas. City Manager Lawson asked how did this year compare with last year, in terms of the parade participation? Ms. Greiner replied that last year, there more than 2000 participants, with larger groups, and 42 applications.

The Council thanked staff for providing the updated information.

ORDINANCE

16. Introduce Ordinance No. 38.768

Planning Director Tom Williams explained the need for the update to the Milpitas Municipal Code. He stated it was essentially a "housekeeping" re-zone item to permit the project at 2015 Calaveras Rd. to go forward.

City Attorney Steve Mattas read the title of the ordinance "An Ordinance of the City of Milpitas Rezoning a Parcel of Land from Agriculture (A) to Single Family Residential (R1-6) for Calaveras Country Estates."

(1) Motion: waive the first reading of Ordinance No. 38.768 beyond the title

Motion/Second: Vice Mayor Gomez/Councilmember Livengood

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

(2) Motion: introduce Ordinance No. 38.768 for the previously approved Zone Change No. ZC2004-1 for the Calaveras Country Estates Subdivision

Motion/Second: Vice Mayor Gomez/Councilmember Giordano

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

RESOLUTIONS

Items were adopted on the Consent Calendar.

BIDS AND CONTRACTS

Items were adopted on the Consent Calendar.

ADJOURNMENT

Mayor Esteves adjourned the meeting at 11:19 PM.

The foregoing minutes were approved by the Milpitas City Council as submitted on August 1, 2006.

Mary Lavelle
City Clerk